



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 210520-0113]

RIN 0648-BK42

#### Pacific Halibut Fisheries; Catch Sharing Plan

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues regulations to remove limits on the maximum amount of halibut Individual Fishing Quota (IFQ) that may be harvested by a vessel, commonly known as vessel use caps, in IFQ regulatory areas 4A (Eastern Aleutian Islands), 4B (Central and Western Aleutian Islands), 4C (Central Bering Sea), and 4D (Eastern Bering Sea) for the 2021 IFQ fishing year. This action is needed to provide additional flexibility to IFQ participants in 2021 to ensure allocations of halibut IFQ can be harvested by the limited number of vessels operating in these areas. This action is within the authority of the Secretary of Commerce to establish additional regulations governing the taking of halibut which are in addition to, and not in conflict with, those adopted by the International Pacific Halibut Commission (IPHC). This action is intended to promote the goals and objectives of the IFQ Program, the Northern Pacific Halibut Act of 1982 (Halibut Act), and other applicable laws.

**DATES:** Effective [*insert date of publication in the FEDERAL REGISTER*], through December 31, 2021.

**ADDRESSES:** Electronic copies of the Categorical Exclusion, the Regulatory Impact Review (RIR) (herein referred to as the “Analysis”), and the Final Regulatory Flexibility

Analysis (FFRA) prepared for this action are available from <http://www.regulations.gov> or from the NMFS Alaska Region website at <https://www.fisheries.noaa.gov/region/alaska>.

**FOR FURTHER INFORMATION CONTACT:** Abby Jahn, [abby.jahn@noaa.gov](mailto:abby.jahn@noaa.gov), 907-586-7228.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

This final rule will implement regulations to temporarily remove vessel use caps in Areas 4A, 4B, 4C, and 4D in 2021. The existing vessel use caps were recommended by the Council and implemented by NMFS as part of the IFQ Program (58 FR 59375; November 9, 1993) as regulations that were in addition to, and not in conflict with, those adopted by the IPHC, consistent with the Halibut Act (16 U.S.C. 773c(c)).

The following sections describe the IFQ Program, halibut IFQ vessel use caps, the rationale and effects of temporarily removing vessel use caps in Areas 4A, 4B, 4C, and 4D, and the regulations that will be implemented under this final rule.

### *IFQ Program*

Commercial halibut and sablefish fisheries in Alaska are subject to regulation under the IFQ Program and the CDQ Program (50 CFR part 679). A key objective of the IFQ Program is to support the social and economic character of the fisheries and the coastal fishing communities where many of these fisheries are based. For more information about the IFQ Program, please refer to Section 2.3.1 of the Analysis. Because this rule is specific to the halibut IFQ fishery and not the sablefish component of the IFQ Program that is managed under the Magnuson Stevens Act's authorization, reference to the IFQ Program in this preamble is specific to halibut unless otherwise noted.

Under the IFQ Program, access to the commercial halibut fisheries is limited to those persons holding halibut quota share (QS). Quota share is an exclusive, revocable privilege that allows the holder to harvest a specific percentage of the annual commercial catch limit in the halibut fishery. In addition, QS is designated for specific geographic areas of harvest, a specific vessel operation type (catcher vessel (CV) or catcher/processor (CP)), and for a specific range of vessel sizes that may be used to harvest the halibut (vessel category). Out of the four vessel categories of halibut QS, Category A shares are designated for CPs that process their catch at sea (*e.g.*, freezer longline vessels) and do not have a vessel length designation, whereas Category B, C, and D shares are designated to be fished on CVs that meet specific length designations (§ 679.40(a)(5)).

In the IFQ Program, NMFS annually issues IFQ permits to each QS holder. An annual IFQ permit authorizes the permit holder to harvest a specified amount of the IFQ species in an Area from a specific operation type and vessel category. IFQ is expressed in pounds (lb) and is based on the amount of QS held in relation to the total QS pool for each Area with an assigned catch.

The IFQ Program established: 1) limits on the maximum amount of QS that a person could use (*i.e.*, be used to receive annual IFQ) (§ 679.42(f)); 2) limits on the number of small amounts of indivisible QS units, known as QS blocks, that a person can hold (§ 679.42(g)); 3) limits on the ability of IFQ assigned to one CV vessel category (vessel category B, C, or D IFQ) to be fished on a different (larger) vessel category with some limited exceptions (§ 679.42(a)(2)); and 4) limits on the maximum amount of IFQ that may be harvested by a vessel during an IFQ fishing year (§ 679.42(h)). Only qualified individuals and initial recipients of QS are eligible to hold CV QS and they are required to be on the vessel when the IFQ is being fished, with a few limited exceptions (§ 679.41(h)(2)). All of these limitations were established to retain the owner-operator

nature of the CV IFQ fisheries, limit consolidation of QS, and ensure the annual IFQ is not harvested on a small number of larger vessels.

On March 30, 2021, NMFS published an emergency rule to modify the temporary transfer provision of the IFQ Program for the commercial halibut and sablefish fisheries for the 2021 IFQ fishing year (86 FR 16542, March 30, 2021). That emergency rule allows QS holders to transfer IFQ to otherwise eligible recipients. This transfer flexibility promotes the complete and efficient harvest of the IFQ fisheries. Furthermore, that emergency rule temporarily alleviates impacts of unforeseen economic and social conditions in the IFQ fisheries. For example, QS holders will have more flexibility to select vessels to harvest their IFQ which may increase the number of vessels available to harvest (Section 2.6 of the Analysis). That emergency rule does not modify other provisions of the IFQ Program, including vessel use caps that may constrain fishing operations.

#### *Halibut IFQ Vessel Use Caps*

The IFQ Program established vessel use caps to limit the maximum amount of halibut that could be harvested on any one vessel. The limits are intended to help ensure that a minimum number of vessels are engaged in the halibut fishery and to address concerns about the socio-economic impacts of consolidation under the IFQ Program. For additional detail on vessel use caps, see the preamble to the proposed rule for the IFQ Program (57 FR 57130; December 3, 1992).

This final rule refers to halibut catch limits, commercial halibut allocations, and vessel use caps in net pounds or net metric tons. Net pounds and net metric tons are defined as the weight of halibut from which the gills, entrails, head, and ice and slime have been removed. This terminology used in this final rule is consistent with the IPHC, which recommends fishery catch limits (FCEY) and calculates halibut mortality in net pounds.

Relevant to this final rule, regulations at § 679.42(h)(1) state: “No vessel may be used, during any fishing year, to harvest more IFQ halibut than one-half percent of the combined total catch limits of halibut for IFQ regulatory areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E.” Applying this regulation to 2021 yields a vessel use cap of 92,848 lb (42.1 mt). This vessel use cap applies to vessels harvesting IFQ halibut in the areas subject to this final rule: Areas 4A, 4B, 4C, and 4D.

In addition, regulations at § 679.42(h)(1)(ii) state that “No vessel may be used, during any fishing year, to harvest more than 50,000 lb (22.7 mt) of IFQ halibut derived from QS held by a CQE.” Compared to § 679.42(h)(1)’s vessel use cap, § 679.42(h)(1)(ii) imposes an even more restrictive vessel use cap on vessels that are harvesting IFQ halibut derived from QS held by a community quota entity (CQE). A CQE is a NMFS-approved non-profit organization that represents small, remote, coastal communities that meet specific criteria to purchase and hold CV halibut QS on behalf of an eligible community. The CQE holds QS and leases the IFQ derived from the underlying QS to community residents. Relevant to this final rule, a CQE is authorized to hold halibut QS in Area 4B on behalf of the community of Adak, Alaska (79 FR 8870; February 14, 2014). Any vessel harvesting halibut IFQ derived from the QS held by the CQE representing the community of Adak is subject to this more restrictive 50,000 lb (22.7 mt) vessel use cap.

*Rationale and Effects of Temporarily Removing Vessel Use Caps in Areas 4A, 4B, 4C, and 4D*

On February 10, 2021, at their regularly-scheduled meeting, the Council addressed requests from IFQ fishery stakeholders to remove vessel use caps applicable to the halibut IFQ fisheries (Sections 1 and 2.3 of the Analysis). These requests were in part based on the success of the 2020 final rule that removed vessel use caps in Area 4 that provided flexibility to the IFQ halibut fleet. In 2020, vessels harvested up to or over the

vessel use cap in multiple Area 4 areas under the previous rule lifting these restrictions. Based on stakeholder engagement and considering a range of factors, the Council recommended, and now NMFS issues, this final rule. These factors include, but are not limited to:

- The unforeseen complications of health advisories and government-issued travel policies impose on fishing operations in the 2021 fishing year, particularly in the remote BSAI halibut IFQ fishery. These advisories and policies may restrict the ability for vessels and crew to operate and fully harvest their IFQ (Sections 2.3 and 2.5 of the Analysis);
- The relatively large proportion of vessels participating in the Area 4A, 4B, 4C, and 4D halibut IFQ fishery that are operating near current vessel use caps, thereby limiting the amount of additional IFQ that could be harvested on vessels operating in those Areas (Section 2.3 of the Analysis);
- The minimum number of vessels required to fully harvest the IFQ held by the affected CQE representing the community of Adak, Alaska, exceeds the number of vessels owned by residents of the community (Sections 2.3.1.6 and 2.3.1.7 of the Analysis);
- Reduced ex-vessel prices due to poor market conditions that may further limit the number of vessels that can economically harvest their halibut IFQ in Areas 4A, 4B, 4C, and 4D (Sections 2.3.1.2 and 2.3.1.8 of the Analysis); and
- Public health risks, combined with health measures at specific remote ports in Areas 4A, 4B, 4C, and/or 4D, which may further limit the ability of smaller vessels to operate because processing facilities and vessel services are not available. For example, in 2020, the local St. Paul fleet did not operate due to public health risks and adverse economic conditions (Section 2.3 of the Analysis).

The reader is referred to the Analysis, particularly Sections 2.3 and 2.6, for additional detail on the efficacy of the 2020 final rule, the range of factors considered for this final rule, and the anticipated effects of removing the vessel use caps in Areas 4A, 4B, 4C, and 4D for both CQE-associated vessels and non-CQE-associated vessels.

After considering these factors, the Council recommended “expedited action” to remove vessel use caps for the halibut IFQ fishery in Areas 4A, 4B, 4C, and 4D. NMFS accordingly established an expedited 15-day comment period for the proposed rule. Due to the widespread industry support and the Council’s request for expedited rulemaking and NMFS determination that this final rule should take effect before fishing vessels approach their use caps.

The Council did not recommend, and this final rule does not include, measures to relieve the vessel use caps for the sablefish IFQ fishery, or for other halibut IFQ Areas, due to the larger number of vessels that are currently active in the sablefish IFQ fishery and in these other halibut Areas. Detailed information indicating that halibut harvests in these other IFQ Areas would not be constrained under the current vessel use caps is available in Section 2.3.1.4 of the Analysis.

The Council and NMFS also considered the potential impacts on halibut conservation and management if vessel use caps vessels in Areas 4A, 4B, 4C, and 4D are relieved for the 2021 IFQ fishing year. The final regulatory amendments in this rule will temporarily add a regulation that would remove vessel use caps in Areas 4A, 4B, 4C, and 4D because the vessel use caps may restrict the harvest of halibut in these areas, and less restrictive management measures are needed as soon as practicable to ensure the more complete harvest of the halibut resource during the 2021 IFQ fishing year. This final rule is responsive to the uncommon circumstances in the fishery in 2021 and does not modify the vessel use cap provisions in future years, consistent with the Council’s goals in implementing vessel use caps in this fishery (Section 2.3 in the Analysis). This final rule

does not modify other elements of the IFQ Program. This final rule does not increase or otherwise modify the 2021 halibut catch limits adopted by the IPHC and implemented by NMFS (86 FR 13475, March 9, 2021). This final rule does not modify any other conservation measures recommended by the IPHC and adopted by NMFS, nor any other conservation measures implemented by NMFS independent of the IPHC. This final rule does not modify other limitations on the use of QS and IFQ described in the previous sections of this preamble.

### *Final Regulations*

After considering the best available information, the Convention, the status of the halibut resource, and the potential social and economic costs of maintaining the vessel use cap limits described in this preamble, this final rule adds a new, temporary provision at 50 CFR 679.42(h)(1)(iii) to remove vessel use caps for vessels harvesting IFQ halibut in Areas 4A, 4B, 4C, and 4D during the 2021 IFQ fishing year. Because under existing regulations, vessel use caps are applied at the fishery level including harvest in all areas, the final regulations clarify that harvest of IFQ halibut in regulatory areas 4A, 4B, 4C, and 4D is excluded from the calculation of vessel use caps in IFQ regulatory areas 2C, 3A, or 3B during the 2021 IFQ fishing year.

### *Changes from Proposed to Final Rule*

NMFS did not make changes to the regulatory text in this final rule from the regulatory text in the proposed rule.

### *Comments and Responses*

No comment letters were received during the comment period for the proposed rule (86 FR 19207, April 13, 2021).

### **Classification**

Regulations governing the U.S. fisheries for Pacific halibut are developed by the International Pacific Halibut Commission (IPHC), the Pacific Fishery Management

Council, the North Pacific Fishery Management Council (Council), and the Secretary of Commerce. Section 5 of the Northern Pacific Halibut Act of 1982 (Halibut Act, 16 U.S.C. 773c) allows the Regional Council with authority over a particular geographical area, to develop regulations governing the allocation and catch of halibut in U.S. Convention waters as long as those regulations do not conflict with IPHC regulations. This action is consistent with the Council's authority to allocate halibut catches among fishery participants in the waters in and off Alaska.

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date. It is important that this final rule is implemented in a timely manner before fishing vessels approach their use caps. The IFQ halibut fishing season is already underway and began on March 7, 2021. A consequence of delayed effectiveness of this final rule is that a vessel's fishing activity may be limited unnecessarily if a vessel reaches their use cap prior to the effective date of this rule. Additionally, an expedited implementation provides much needed flexibility. Any delay in the effective date of this final rule would be contrary to public interest. Therefore, there is good cause to advance this thoroughly considered action.

This rule has been determined to be not significant for purposes of Executive Order 12866.

A Regulatory Impact Review was prepared to assess costs and benefits of available regulatory alternatives. A copy of this analysis is available from NMFS (see **ADDRESSES**). Specific aspects of the economic analysis are discussed below in the Final Regulatory Flexibility Analysis section.

#### *Small Entity Compliance Guide*

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis the agency shall publish one or more guides

to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides”. Copies of the proposed rule, this final rule, and the small entity compliance guide are available on the Alaska Region’s website at:

*<https://www.fisheries.noaa.gov/alaska/sustainable-fisheries/pacific-halibut-and-sablefish-individual-fishing-quota-ifq-program>.*

#### *Final Regulatory Flexibility Analysis*

This Final Regulatory Flexibility Analysis (FRFA) incorporates the initial regulatory flexibility analysis (IRFA) and the analyses completed to support this action. No public comments were received for the proposed rule or in response to the IRFA. Section 604 of the Regulatory Flexibility Act (RFA) requires that when an agency promulgates a final rule under section 553 of Title 5 of the U.S. Code, after being required by that section or any other law to publish a general notice of proposed rulemaking, the agency shall prepare a FRFA. Section 604 describes the required contents of a FRFA: 1) a statement of the need for and objectives of the rule; 2) a statement of the significant issues raised by the public comments in response to the IRFA, a statement of the assessment of the agency of such issues, and a statement of any changes made to the proposed rule as a result of such comments; 3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments; 4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; 5) a description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and 6) a description of the steps the agency has taken to minimize the significant economic impact

on small entities consistent with the stated objectives of applicable statutes including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in this final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

A description of this final rule and the need for and objectives of this rule are contained in the preamble to this final rule and the preamble to the proposed rule (citation). That description is not repeated here.

#### *Public and Chief Counsel for Advocacy Comments on the IRFA*

NMFS published the proposed rule on April 13, 2021 (86 FR 19207). An IRFA was prepared and included in the Classification section of the preamble to the proposed rule. The comment period for the proposed rule closed on April 28, 2021. NMFS did not receive any comments. The Chief Counsel for Advocacy of the SBA did not file any comments on the proposed rule.

NMFS did not receive any comments on the proposed rule or specifically on the IRFA.

#### *Number and Description of Small Entities Regulated by This Final Rule*

This final rule directly regulates the owners and operators of vessels that are used to harvest halibut IFQ in IFQ Areas 4A, 4B, 4C, or 4D. From 2014 through 2019, (the most recent year with complete data) 119 unique vessels harvested halibut IFQ in IFQ Areas 4A, 4B, 4C, or 4D. Based on average annual gross revenue data, including affiliations, all but three of the vessels that landed halibut between 2014 and 2019 are considered small entities based on the \$11 million threshold. Additional detail is included in Sections 2.8 in the Analysis prepared for this final rule (see **ADDRESSES**).

#### *Impacts of this Action on Small Entities*

This action would relieve a restriction which could facilitate harvesters to fully utilize IFQ allocations in Area 4 in the 2021 fishing season. Although it is difficult to

predict the direct impact of the regulatory changes implemented for the 2020 IFQ seasons, harvest rates achieved in 2020 relative to all other years (2006-2020) likely indicates the regulatory flexibilities implemented in 2020 (both the temporary transfer provisions as well the vessel use cap exemption) had some positive impact on the harvest rates, as described in Section 2.6 of the Analysis prepared for this action (see **ADDRESSES**).

*Description of Significant Alternatives That Minimize Adverse Impacts on Small Entities*

The RFA requires identification of any significant alternatives to the final rule that accomplish the stated objectives of the final action, consistent with applicable statutes, and that would minimize any significant economic impact of the final rule on small entities. The Council requested an action alternative and in considering the Council's request NMFS analyzed the impacts of the action alternative compared to the status quo.

The status quo alternative would retain the existing vessel use cap restrictions as defined under 50 CFR 679.42(h). Considering the existing social and economic conditions in the IFQ fishery since 2020, the supply of vessels available to prosecute Area 4 halibut IFQ fisheries could be limited such that a portion of the 2021 annual halibut allocation could be left unharvested if available vessels must comply with existing halibut IFQ vessel use limitations.

The action alternative would remove limits on the maximum amount of halibut IFQ that may be harvested by a vessel in IFQ regulatory areas 4A, 4B, 4C, and 4D. The action alternative and the regulations for this action would provide additional flexibility to IFQ participants in 2021 to ensure allocations of halibut IFQ can be harvested by the limited number of vessels operating in these areas.

*Duplicate, Overlapping, or Conflicting Federal Rules*

NMFS has not identified any duplication, overlap, or conflict between this final rule and existing Federal rules.

*Recordkeeping, Reporting, and Other Compliance Requirements*

This action does not contain additional recordkeeping, reporting, or other compliance requirements.

*Collection-of-Information Requirements*

This final rule does not contain a change to a collection of information requirement for purposes of the Paperwork Reduction Act of 1995. The existing collection of information requirements would continue to apply under the following OMB Control Number(s): 0648-0272, Alaska Pacific Halibut & Sablefish Fisheries: Individual Fishing Quota (IFQ).

**List of Subjects in 50 CFR Part 679**

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: May 20, 2021.

**Samuel D. Rauch, III,**

*Deputy Assistant Administrator for Regulatory Programs,*

*National Marine Fisheries Service.*

For the reasons set out in the preamble, NMFS amends 50 CFR part 679 as follows:

**PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF  
ALASKA**

1. The authority citation for 50 CFR part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108-447;  
Pub. L. 111-281.

2. In § 679.42, add paragraph (h)(1)(iii) to read as follows:

**§ 679.42 Limitations on use of QS and IFQ.**

\* \* \* \* \*

(h) \* \* \*

(1) \* \* \*

(iii) Notwithstanding the vessel use caps specified in paragraphs (h)(1) introductory text and (h)(1)(ii) of this section, vessel use caps do not apply to vessels harvesting IFQ halibut in IFQ regulatory areas 4A, 4B, 4C, and 4D during the 2021 IFQ fishing year. Harvest of IFQ halibut in regulatory areas 4A, 4B, 4C, and 4D is excluded from the calculation of vessel use caps for IFQ regulatory areas 2C, 3A, or 3B during the 2021 IFQ fishing year.

\* \* \* \* \*

[FR Doc. 2021-11087 Filed: 5/25/2021 8:45 am; Publication Date: 5/26/2021]